

- II. Claims 21 and 22, drawn to a socket wrench for a particular fastener, classified in class 81, subclass 121.1.
- III. Claims 23-29, Claims 1-20, drawn to a bracket for holding a sign, in class 248, subclass 200.
- IV. Claim 30, drawn to a method of assembling two or more items together, classified in class 29, subclass 700.

With respect to this restriction requirement, Applicant courteously solicits reconsideration of such requirement as it relates to the requirement of election between Inventions I and II. Applicant requests that the Examiner withdraw the requirement and enter an allowance of his application. Applicant does not traverse the requirement of election among inventions I, III and IV.

More particularly, Claims 1-20 are drawn to a security fastener that has a recited structure for use, as set forth in the preamble, with a nut and bolt combination. Claim 21-22 are drawn to a security fastener system that recites a security fastener along with the nut and bolt and a wrench to engage the nut or bolt when received in the security fastener.

For proper restriction, the Examiner must show that the inventions are independent and distinct. "Independent" means that there is no disclosed relationship between two claims, that is they are unconnected in design, operation, or effect. M.P.E.P. §802.01. "Distinct" means that two or more subjects as disclosed are related, for example, as combination and subcombination. *Id.*

Claims 1 and 21, for example, are clearly related since there is a common disclosed relationship. They each include a fastener that works with a nut or bolt to prevent unauthorized removal. Therefore, they are not independent.

Therefore, restriction would be proper only if the inventions are distinct. Where a combination and a subcombination are involved, as is the present situation, two-way distinctiveness is required. M.P.E.P. §806.05(c). First, it must be demonstrated that the combination does not require the particulars of the subcombination. Second, the subcombination must have utility by itself.

Since Applicant agrees that the subcombination, i.e., the security fastener, has utility by itself, the focus should be placed on whether the combination requires the particulars of the subcombination. Here, the subcombination includes a body portion with a cylindrical first cavity that thus forms a radially extending flange. This cavity has a selected depth along with a sidewall surface that has reduced clearance to prevent engagement by a standard socket wrench when a bolt head or a nut is in the cavity. The combination includes a security device that is similar (see claim 21, paragraph (B)). The combination adds the bolt and nut and a wrench that is not of standard size. However, the combination does have similar particulars as the subcombination. Claim 21, is not, as stated by the Examiner, "drawn to a socket wrench".

Applicant suggests that there is not two-way distinctiveness between the combination and subcombination sufficient to require restriction. Accordingly, Applicant disagrees with the Examiner's position that inventions identified as Inventions I and II are sufficiently distinct to require separate prosecutions and patents. Therefore, the claims of Invention I and Invention II are believed to have sufficient similarity to be examined in a common application. By requiring the Applicant to proceed separately by a rigid adherence is overly formalistic. Such position unduly exposes the Applicant


to increased costs of pursuing and maintaining patent protection on his invention.

Nonetheless, in accordance with 37 C.F.R. §1.143, Applicant acknowledges that a proper reply to the Examiner's restriction requirement is not complete unless an election is made. Accordingly, Applicant provisionally elects to proceed with examination on Invention I, Claims 1-20 but maintains that the Invention II claims should not be withdrawn because it is not distinct therefrom. Applicant hereby cancels claims 23-30 subject to his right to file divisional applications thereon.

If there are any further issues regarding the above-identified patent application, it is respectfully requested that the Examiner contact the undersigned attorney for the Applicant at the number listed below.

Respectfully submitted,

***TIMOTHY J. MARTIN, P.C.***

A handwritten signature in black ink, appearing to read "Timothy J. Martin". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Timothy J. Martin, #28,640  
Michael R. Henson, #39,222  
Rebecca A. Gegick #51,724  
9250 W. 5th Avenue, Suite 200  
Lakewood, Colorado 80226  
(303) 232-3388